

**Remarks**

Claims 1-16 are pending in the application.

Claims 1-5, 15 and 16 are objected to because of various informalities.

Claims 1-4, 6-9 and 11-16 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 6,370,112 (Voelker) in view of US 5,809,011 (Almay).

Claims 5 and 10 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 of Voelker in view of Almay and further in view of US 6,535,489B1 (Merchant).

Claims 1-4, 6-9 and 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Almay in view of US 6,028,861 (Soirinsuo).

Claims 5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Almay in view of Soirinsuo as applied to claims 1 and 6 above, and further in view of Merchant.

Each of the various rejections and objections are overcome by amendments that are made to the specification, drawing, and/or claims, as well as, or in the alternative, by various arguments that are presented.

Entry of this Amendment is proper under 37 CFR 1.116 since the amendment: (a) places the application in condition for allowance for the reasons discussed herein; (b) does not raise any new issue requiring further search and/or consideration since the amendments amplify issues previously discussed throughout prosecution; (c) satisfies a requirement of form asserted in the previous Office Action; (d) does not present any additional claims without canceling a corresponding number of finally rejected claims; or (e) places the application in better form for appeal, should an appeal be necessary. The amendment is necessary and was not earlier presented because it is made in response to arguments raised in the final rejection. Entry of the amendment is thus respectfully requested.

Any amendments to any claim for reasons other than as expressly recited herein as being for the purpose of distinguishing such claim from known prior art are not being made with an intent to change in any way the literal scope of such claims or the range of

equivalents for such claims. They are being made simply to present language that is better in conformance with the form requirements of Title 35 of the United States Code or is simply clearer and easier to understand than the originally presented language. Any amendments to any claim expressly made in order to distinguish such claim from known prior art are being made only with an intent to change the literal scope of such claim in the most minimal way, i.e., to just avoid the prior art in a way that leaves the claim novel and not obvious in view of the cited prior art, and no equivalent of any subject matter remaining in the claim is intended to be surrendered.

Also, since a dependent claim inherently includes the recitations of the claim or chain of claims from which it depends, it is submitted that the scope and content of any dependent claims that have been herein rewritten in independent form is exactly the same as the scope and content of those claims prior to having been rewritten in independent form. That is, although by convention such rewritten claims are labeled herein as having been "amended," it is submitted that only the format, and not the content, of these claims has been changed. This is true whether a dependent claim has been rewritten to expressly include the limitations of those claims on which it formerly depended or whether an independent claim has been rewritten to include the limitations of claims that previously depended from it. Thus, by such rewriting no equivalent of any subject matter of the original dependent claim is intended to be surrendered. If the Examiner is of a different view, he is respectfully requested to so indicate.

#### **Objection to the Claims**

Claims 1-5, 15 and 16 are objected to because of various informalities.

Claim 1 has been amended to add clarity, including the removal of "operable to" from the claim language, as suggested by the Examiner.

Claim 15 has been amended as suggested by the Examiner, with the language "a period of time" in line two, now reciting "*the* period of time."

Claim 16 has been amended as suggested by the Examiner, with the language "only data packets the single input" in line one, replaced to now recite "only data packets *from* the single input."

Claims 2-5 were objected to as being dependent on objected claim 1, but current amendments to claim 1 should now overcome that objection.

Therefore, Applicants respectfully request that the objections be withdrawn.

#### **Double Patenting Rejections**

Claims 1-4, 6-9 and 11-16 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 of Voelker in view of Almay.

Claims 5 and 10 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 of Voelker in view of Almay and further in view of Merchant.

Since a double patenting rejection depends on the claims of the application, until Applicants have claims that are allowable but for the double patenting rejection, Applicants cannot evaluate the correctness of any suggested double patenting rejection. As such, Applicants also cannot determine any arguments that might be put forth against the suggested double patenting rejection. Therefore, as this double patenting rejection is premature, applicants will address such a ground of rejection once all other grounds of rejection are overcome.

#### **Rejection Under 35 U.S.C. 103(a)**

Claims 1-4, 6-9 and 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Almay in view of Soirinsuo.

According to MPEP §2143, to establish a prima facie case of obviousness under §103, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The Applicant respectfully maintains that the Office Action failed to establish a *prima facie* case of obviousness, because the combination of Almay and Soirinsuo fails to teach or suggest all the claim elements. The Examiner still contends that Soirinsuo teaches “commonly sourced data packets received at the first input port are discarded...,” but this is not true. Although the Examiner cites text in which Soirinsuo utilizes the word “discard,” the actual process to which it refers in Soirinsuo is not at all similar to what is represented by the term “discard” in the invention.

The invention is directed toward receiving packets simultaneously from at least two different paths, and discarding packets at their port of arrival if they are detected to be out of order. Specifically, the invention claims “in response to a commonly sourced data packet being received out of order at a first of the plurality of input ports, commonly sourced data packets received at the first input port are discarded for a period of time while commonly sourced data packets received at the other input port are processed.” To the contrary, however, Soirinsuo never allows data at any more than one input port to be considered, or “processed,” at any given time. Soirinsuo instead teaches an *all-or-nothing* switching process, wherein *all* data transmissions are permitted to be forwarded (with no data being “discarded”) from a particular port, while *no* data is permitted to be forwarded from the other(s). Soirinsuo succinctly explains this with “for an egress switch-over, the ATM switch will send out all cells coming from the ‘new’ connection, and discard all cells received on the ‘old’ channel” (col. 10, lines 25-27, emphasis added). The Soirinsuo switchover is completely discrete, where after no cells arriving at any input port that has not been explicitly switched to are even considered, be they out-of-order or not.

Soirinsuo in fact even teaches away from “discard,” as it is claimed. Soirinsuo does not mention any provisions for actually *detecting* if packets or cells are being received out of order or not, so for one, it is not even possible for Soirinsuo to specifically respond “to a commonly sourced data packet being received out of order” by any means. Yet, the only means that are actually articulated by Soirinsuo to address cells prospectively arriving out of order, merely entail waiting until a “frame completed” state is received before performing a switchover (Figure 10), and then performing the switchover *immediately* after that occurs. Soirinsuo Figure 9, and column 9, lines 51-54

explains “the integrity of AAL-5 packets 901 can be maintained by timing the switch-over so that switchover 902 happens right after a cell 904 having a last cell indication set, e.g., the AUU or user signaling bit.” As is shown, all processes in Soirinsuo are clearly directed toward *completely* receiving all cells on a singular elected path, and not *discarding* any of them once cell reception has begun. Thus, in addition to not teaching “discard” as represented by the claims, Soirinsuo does not provide any suggestion or motivation for combining its teachings with any other reference to arrive at the limitation either.

Therefore, Almay in view of Soirinsuo does not satisfy the requirements for a 35 U.S.C. 103(a) rejection according to MPEP §2143. The arguments of the Office Action against independent claims 6 and 11 are the same as those against independent claim 1, so the same response in defense of claim 1 from above also applies to claims 6 and 11, and do not need to be repeated.

Since all of the dependent claims that depend from the independent claims include all the limitations of the respective independent claim from which they ultimately depend, each such dependent claim is also allowable over Almay in view of Soirinsuo under 35 U.S.C. 103(a).

In view of the above, Applicants respectfully request the rejection of claims 1-4, 6-9 and 11-16 be withdrawn.

### **Claims 5 and 10**

Claims 5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Almay in view of Soirinsuo as applied to claims 1 and 6 above, and further in view of Merchant.

Each ground of rejection applies only to dependent claims, and each is predicated on the validity of the rejection under 35 U.S.C. 103 given Almay in view of Soirinsuo as applied to claims 1 and 6 above, and further in view of Merchant. Since the rejection under 35 U.S.C. 103 given Almay in view of Soirinsuo has been overcome, as described hereinabove, and there is no argument put forth by the Office Action that Merchant supplies that which is missing from Almay in view of Soirinsuo to render the independent claims obvious, these grounds of rejection cannot be maintained..

Therefore, the rejection should be withdrawn.

**Finality of Office Action**

Amendments to the claims made in response to the initial office action were performed merely for the purpose of more clearly defining the invention, not to specifically avoid any grounds for a rejection posed by the Examiner. Therefore, the Applicant does not feel the aforementioned amendments introduced a new ground of rejection that would necessitate a Final Office Action as specified by MPEP 706.07(a), and respectfully asks the Examiner to reconsider the finality of the present Office Action.

**Conclusion**

It is respectfully submitted that the Office Action's rejections have been overcome and that this application is now in condition for allowance. Reconsideration and allowance are, therefore, respectfully solicited.

If, however, the Examiner still believes that there are unresolved issues, the Examiner is invited to call Eamon Wall at (732) 530-9404 so that arrangements may be made to discuss and resolve any such issues.

Respectfully submitted,

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